

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. _____ -CV- _____

CEVIN D. KEHM,

Plaintiff,

vs.

**AIR LINE PILOTS ASSOCIATION,
INTERNATIONAL,**

Defendant

DEMAND FOR JURY TRIAL

PLAINTIFF'S ORIGINAL COMPLAINT

I, CEVIN D. KEHM, Plaintiff pro se in the above styled cause, hereby file my Complaint – and make these allegations based on information and belief and/or which are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery - against Defendant, AIR LINE PILOTS ASSOCIATION, INTERNATIONAL (hereinafter “ALPA” or “Defendant”), and allege as follows:

INTRODUCTION

1. In 1997, the pilots of American Eagle Airlines bargained for and ratified the right to “flow-through” from American Eagle Airlines to careers at American Airlines with much higher net pay and benefits in exchange for a contract of

1 sixteen (16) years duration with yearly pay adjustments to be determined by the
2 average raises of other, similar carriers each year and a “no strike” clause for the
3 sixteen (16) year duration of the agreement.

4 2. As part of its roadshows advocating for the new contract, ALPA advised
5 American Eagle pilots that every American Eagle pilot employed on or before
6 1997 would transfer to American Airlines under the “flow-through” provision of
7 the new contract within five (5) years, unless those pilots chose to stay at American
8 Eagle Airlines as “Eagle Rights” pilots.

9 3. From the outset, the flow-through agreement did not provide the benefits it
10 was purported to have by ALPA. Numerous disputes arose and many arbitrations
11 occurred, attempting to interpret, re-interpret and capture what the flow-through
12 agreement was supposed to provide: fifty (50) percent of all American Airlines
13 new hire pilots were to come from the ranks of American Eagle flow-through
14 pilots.

15 4. Beginning in 2001, a set of arbitrations took place on the American Eagle
16 Airlines property. These arbitrations were uniformly decided in favor of the
17 American Eagle flow-through pilots and against management – and crucially,
18 against the Allied Pilots Association’s (hereinafter “APA”) - interpretations and
19 desires. The APA represented the American Airlines pilots.

20 5. In 2002, a newly elected group of ALPA pilot representatives took office on
21 the American Eagle property. These representatives had no flow-through rights and
22 proved hostile to the existing and arbitraly upheld rights of flow-through pilots and
23 breached ALPA’s duty of fair representation to the Plaintiff by exchanging arbitral
24 rulings in favor of the Plaintiff transferring to American Airlines for new American
25 Airlines employment rights for themselves and their core group of political
26 supporters.
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1 6. By manipulating the dispute resolution process in a manner that was
2 arbitrary and in bad faith and by engaging management in negotiations that were
3 kept secret from the American Eagle flow-through pilots, ALPA breached its duty
4 of fair representation to the Plaintiff and ultimately secured the new employment
5 rights at American Airlines it sought, at the expense of the rights of the Plaintiff.

6 7. At all relevant times during the events described herein, and specifically
7 after October 2000, ALPA had a conflict of interest in representing the American
8 Eagle pilots; ALPA's overriding goal was to organize the pilots of American
9 Airlines, who were – and currently are – represented by the APA. Although a
10 signatory to Letter 3, the APA never embraced the American Eagle pilots' rights
11 under Letter 3 and often took positions in disputes and arbitrations that were
12 contrary to the best interests of those American Eagle pilots, even though those
13 American Eagle pilots possessed American Airlines seniority numbers. It was no
14 secret on the American Eagle property that many American Airlines pilots – and
15 APA representatives – held American Eagle pilots in generally low regard. ALPA
16 did not want to be viewed by the APA, whose members – and more importantly,
17 dues money – they so coveted, as being staunch defenders of American Eagle
18 pilots' rights in what the APA viewed as a zero-sum game relationship: any gains
19 made by American Eagle pilots can only come at the expense of the American
20 Airlines pilot.
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22 8. Finally, ALPA breached its duty of fair representation to the Plaintiff when
23 it arbitrarily, discriminatorily and in bad faith caused and/or allowed him to be
24 stripped of his American Airlines seniority number based on his duress resignation
25 from American Eagle Airlines, a resignation that would have never occurred had
26 the Plaintiff transferred to American Airlines under the provisions of, and in
27 compliance with Letter 3 of the American Eagle pilot contract and previous
28 arbitration rulings dating back as far as May, 2007.

JURISDICTION AND VENUE

9. This Court has proper jurisdiction to entertain the claims set forth herein by virtue of 28 U.S.C. sec. 1331 (federal question jurisdiction); and by virtue of section 301 (b) of the Labor Management Relations Act (29 U.S.C. sec. 141 et seq.); the Labor Management Reporting Disclosure Act ["LMRDA"] (29 U.S.C. sec. 401 et seq.); 28 U.S.C. sec. 1337 (a); the Railway Labor Act ["RLA"] (45 U.S.C. sec. 151 et seq.); and by virtue of the Court's equitable, pendant and supplemental jurisdiction (28 U.S.C. sec. 1367).

10. This Court is a proper venue for the claims set fourth herein pursuant to 28 U.S.C. sec. 1391, by virtue of the fact that Defendant does business within this district, in that:

- i. ALPA represents hundreds of American Eagle Airlines pilots who are based at Miami International Airport, which is located within this district.
- ii. But for ALPA's actions harming Plaintiff, the Plaintiff would be currently employed and based within this district.
- iii. Plaintiff resides in this district.

THE PARTIES

11. Plaintiff Cevin D. Kehm was an American Eagle Airlines pilot from January 31, 1991 until March 18, 2013, when Plaintiff resigned under duress.

12. Plaintiff was a "flow-through" pilot at all pertinent times referred herein and remains so today.

1 13. At all pertinent times referred to herein, defendant ALPA was and is an
2 unincorporated association acting as a labor union.

3 14. ALPA is the largest airline pilot union in the world and represents some 53,
4 000 pilots at dozens of airlines in the United States and Canada. It is chartered by
5 the AFL-CIO and the Canadian Labour Congress, and is a member of the
6 International Federation of Air Line Pilot Associations.

7 15. ALPA is a labor organization and is the certified representative of
8 employees under the provisions of the Railway Labor Act.

9 16. ALPA's principle place of business is Herndon, Virginia.

10 17. ALPA maintains offices in other locations, including Washington, D.C.

11 18. ALPA conducts business nationwide, including in this district. ALPA may
12 be served with summons through its registered agent for service or process or
13 through its officers, wherever they may be found.
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15 **BACKGROUND**

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18 19. In the Fall of 1997, the pilots of American Eagle Airlines, as represented by
19 ALPA, ratified a sixteen (16) year duration Collective Bargaining Agreement
20 (hereinafter "CBA") that contained a provision that moved certain American Eagle
21 pilots to American Airlines under a defined protocol.

22 20. This protocol is known as "Letter 3 Supplemental Agreement" (hereinafter
23 "Letter 3") to the CBA, and provided that, after a defined "training freeze" or
24 "lock-in" period, certain qualifying pilots would be moved to employment at
25 American Airlines in a ratio of one (1) qualifying American Eagle pilot for every
26 one (1) non-American Eagle new-hire pilot that American Airlines hired
27 (hereinafter "one out of two" or "1:2").
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1 21. In October 2000, the Executive Board of ALPA resolved to organize all
2 pilots not then represented by ALPA. This included the pilots of American
3 Airlines.

4 22. The APA also held an executive board meeting on or about October of
5 2000. APA resolved at this meeting to explore a merger with ALPA. To this end, it
6 created an "ALPA Exploratory Committee." This committee was charged with
7 preparing a report on ALPA and the ramifications of a merger. At all relevant
8 times, the APA resolution and ALPA's resolve to obtain the representation rights
9 for American Airlines pilots was unknown to the American Eagle pilots and
10 concealed from the American Eagle pilots by ALPA.

11 23. In the last quarter of 2000, ALPA spent over \$54,000 in expenses relating
12 to its efforts to organize the American Airlines pilots. This was not disclosed to
13 and was concealed from the American Eagle pilots. Upon information and belief,
14 ALPA spent considerable sums in 2001 and 2002 to organize the APA members.

15 24. As a result of the events of September 11, 2001, American Airlines
16 furloughed thousands of former TWA and current American Airlines pilots.
17 American Airlines had acquired TWA in January of 2001 and was in the process of
18 integrating the airline and its pilots into American Airlines.

19 25. During and subsequent to this period, TWA, LLC pilots were offered
20 captain positions at American Eagle Airlines, consistent with what the APA, the
21 union representing the American Airlines pilots, believed was the intent of Letter
22 3.
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24 26. TWA, LLC pilots who were fired or who resigned from American Eagle
25 Airlines at all times retained their American Airlines seniority number and were
26 ultimately offered employment at AA, regardless of whether or not they still
27 worked at American Eagle Airlines.
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1 27. In 2001, as a consequence of this massive furlough, ALPA attempted – via
2 the dispute resolution process and ultimately arbitration – to change the flow-
3 through protocol from “one out of two” to a transfer mechanism based solely on
4 the seniority number of the flow-through pilot. If – for example – a flow-through
5 pilot were more senior on the American Airlines seniority list than a furloughed
6 TWA or American Airlines pilot, such flow-through pilot would be “recalled” to
7 American Airlines ahead of any more junior furloughed American Airlines or
8 TWA pilot.

9 28. The arbitrator in the above dispute ruled against ALPA and stated that
10 American Eagle pilots were not considered “furloughed” American Airlines pilots
11 and that Letter 3 provided no transfer mechanism other than one flow-through pilot
12 per one American Airlines non-flow through new hire pilot (“one-out-of-two”).

13 29. ALPA next filed a grievance contending that TWA pilots were in fact new
14 hire pilots and that as such, they should trigger Letter 3 flow-through provisions
15 for American Eagle pilots.

16 30. On May 11, 2007, Arbitrator LaRocco ruled that former TWA pilots who
17 did not commence active employment at American Airlines in conjunction with the
18 merger (who in fact were furloughed by American Airlines directly from TWA,
19 LLC, and who had never commenced new-hire training at American Airlines) were
20 equivalent to new hires within the meaning of Letter 3, and that the presence of
21 former TWA pilots on the American Airlines seniority list cannot interfere with the
22 rational operation of Letter 3.

23 31. After Arbitrator LaRocco’s ruling clearly in favor of American Eagle pilots
24 governed by Letter 3, MEC Officers and the MEC Negotiating Committee realized
25 that they had leverage to create new rights to move themselves to American
26 Airlines, as American Airlines management and the APA were opposed to
27 American Eagle pilots flowing-through to American Airlines. Given their
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1 politically powerful positions running ALPA on the American Eagle property and
2 their desire to create new employment rights at American Airlines for themselves
3 and the group of pilots supporting them in power, ALPA began manipulating the
4 dispute resolution process, including arbitrations, in order to insure their preferred
5 arbitrary, discriminatory and bad faith-based outcome. Once this decision was
6 taken, ALPA began a long period of non-communication and misleading
7 communication with the membership about what was occurring to enforce Letter 3
8 rulings in favor of flow-through pilots. The result was to tilt the playing field in
9 favor of the union officers and committee members involved in crafting new
10 employment rights at American Airlines by misleading the membership – and
11 especially the Letter 3 pilots – into thinking that their rights were being enforced
12 and not attenuated and changed, as ALPA was actually pursuing.

13 32. Subsequent to Arbitrator LaRocco's ruling (described above), American
14 Eagle management filed a grievance over the question of what effect the expiration
15 of Letter 3 (on May 1, 2008) would have on American Eagle pilots' employment
16 opportunities at American Airlines under that agreement (Letter 3).

17 33. On June 30, 2008, Arbitrator Bloch ruled that the right to flow-through to
18 American Airlines is to be retained by American Eagle pilots governed by Letter 3
19 who, prior to May 1, 2008 received American Airlines seniority numbers.
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21 34. On October 20, 2008, Arbitrator LaRocco awarded American Airlines
22 seniority numbers to a group of American Eagle pilots that included the Plaintiff.

23 35. Subsequent to Arbitrator LaRocco's ruling and award, and subsequent to
24 Arbitrator Bloch's determination, each in favor of and supporting the contractual
25 rights of Letter 3 pilots and the Plaintiff, ALPA never moved to enforce such rights
26 and never demanded that management begin immediately complying with the
27 arbitration awards described above. Had ALPA done so, the Plaintiff would have
28 commenced employment at American Airlines during 2010.

1 36. The CBA states that the System Board of Adjustment's decisions will be
2 "final and binding and conclusive" on the Company and the Association.

3 37. Under the CBA generally, and Letter 3 specifically, ALPA has the right to
4 enforce arbitration decisions in federal court against any and all parties pursuant to
5 the Railway Labor Act, as amended.

6 38. ALPA declined to enforce these decisions in, or out of, federal court and
7 instead allowed American Airlines and American Eagle Airlines managements to
8 continue violating Letter 3, while it (ALPA) embarked on a period of publically
9 stated uncertainty over how to proceed. While American Eagle Letter 3 pilots were
10 being harmed by non-compliance with Arbitrators LaRocco and Bloch's rulings
11 and awards, ALPA advised the pilots it represented on the American Eagle
12 property that it would not be rushed into any decision on a course of action.

13 39. ALPA elected officials referred to American Eagle Letter 3 pilots as
14 members of a "subgroup", and repeatedly stated that American Eagle pilots "would
15 not pay twice" for Letter 3 pilots to be able to exercise their rights under Letter 3
16 and pursuant to arbitral opinions. How or why American Eagle pilots would "pay
17 twice" was never disclosed by ALPA.

18 40. On June 1, 2009, almost seven (7) months after the last arbitral award
19 (LaRocco's award of American Airlines seniority numbers to American Eagle
20 pilots, including the Plaintiff), ALPA placed a grievance before Arbitrator Nicolau
21 who stated that the parties had now agreed to the "narrow question": "Were
22 American Eagle pilots who hold American Airlines seniority numbers entitled to
23 attend American Airlines training classes beginning in June, 2007?" June 2007 was
24 two (2) full years prior to the date this question was asked of Arbitrator Nicolau.
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26 41. Even though all parties agreed that the question was "narrow," ALPA
27 officers and grievance personnel introduced the idea of "downstream damages"
28 into the "narrow question." ALPA acknowledged that pilots prevented from

1 flowing through to American Airlines were harmed, but ALPA also maintained
2 that pilots denied promotions within American Eagle Airlines, and who were not
3 flow through pilots, and thus had no rights under Letter 3, were also harmed by the
4 non-movement of American Eagle pilots to American Airlines. Upon information
5 and belief, ALPA, from this point forward, operated only on obtaining
6 “downstream damages” for the non-Letter 3 pilots. As the final resolution of this
7 matter clearly – and unequivocally – indicates, the pilots with rights under Letter 3
8 were penalized so as to “purchase” new rights to employment at American Airlines
9 for pilots who previously had no tights to such jobs, and for whom the Letter 3
10 disputes did not apply.

11 42. These new rights to employment at American Airlines were delineated in
12 what is known as the “824 Agreement,” (and its progeny) and resulted from
13 clandestine and secret negotiations between MEC officers and committeemen and
14 American Eagle Airlines management.

15 43. On October 18, 2009, Arbitrator Nicolau ruled that American Eagle pilots
16 who held American Airlines seniority numbers were, in fact, entitled to attend
17 American Airlines training classes beginning in June 2007.

18 44. Again, rather than enforce an arbitral ruling in favor of the flow-through
19 pilots by demanding immediate compliance by management with Arbitrator
20 Nicolau’s ruling, or enforcing his ruling and the previous supporting rulings by
21 Arbitrators LaRocco and Bloch in federal court, ALPA continued a lengthy and
22 clandestine negotiation with management that centered on creating new
23 employment rights at American Airlines for non-Letter 3 pilots, using the
24 arbitration rulings as leverage. These negotiations were driven by a group of pilots
25 who were elected to the highest positions within the governing body of ALPA on
26 the American Eagle Airlines property, known as the Master Executive Council
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1 (hereinafter “MEC”), and who had no rights to employment at American Airlines
2 under the now-expired Letter 3 of the CBA.

3 45. ALPA elected pilot representatives were advised by MEC elected officers
4 that issues surrounding Letter 3 were “political” and could not be discussed with
5 ALPA lawyers. Two (2) such ALPA representatives advised the Plaintiff that, on
6 matters pertaining to Letter 3, and specifically during a discussion about Letter 3
7 arbitrations, “we were told by the leadership that we must keep the legal and
8 political separate.” When the Plaintiff advised these two representatives to speak
9 with ALPA lawyer Wayne Klocke, who holds the title of Senior Labor Relations
10 Counsel, and is attached to the ALPA/American Eagle MEC office in Euless,
11 Texas, about the specifics relating to an arbitration decision, the Plaintiff was told,
12 “we are not allowed to.” When the Plaintiff inquired as to what could possibly be
13 political about a Letter 3 arbitration and ruling, he was given no answer.

14 46. Upon information and belief, such a directive preventing elected
15 representatives from discussing Letter 3 matters with ALPA counsel was issued,
16 directly or indirectly, by ALPA lawyers to preclude ALPA lawyers from becoming
17 involved in, or having knowledge of, the MEC officers’ improper attempts to
18 negotiate new employment rights at American Airlines at the expense of the Letter
19 3 pilots with pre-existing rights, thus preserving their future ability to deny any
20 knowledge of negotiations trading rights of one group of pilots for new rights for
21 another group.

22 47. Rather than accepting and complying with Arbitrator Nicolau’s ruling, and
23 per agreement between the four (4) parties to Letter 3 (ALPA, American Eagle
24 Airlines, Inc., the APA and American Airlines, Inc.), the question of remedy in the
25 Nicolau ruling was to be returned to the parties for determination, with Arbitrator
26 Nicolau maintaining jurisdiction.
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1 48. The parties could not agree on a remedy and the question was returned to
2 Arbitrator Nicolau, who scheduled hearings to be held on February 25 and 26 and
3 March 30, 2010.

4 49. By this time, the question before Arbitrator Nicolau transformed itself from
5 a “narrow question” into a question that was “complex and the answer difficult”,
6 according to Arbitrator Nicolau in his Opinion and Award.

7 50. In preparations for the Nicolau remedy hearing, John J. Gallagher, attorney
8 for American Eagle Airlines wrote arbitrator Nicolau a lengthy and very detailed
9 letter advising the arbitrator of his client’s position on the numerous issues
10 surrounding what he had previously agreed was a “narrow question.” In his letter,
11 Mr. Gallagher states that the position of American Eagle Airlines was that
12 American Eagle Letter 3 flow-through pilots were entitled to attend training classes
13 at American Airlines beginning in June 2007, consistent with the LaRocco Opinion
14 of May 11, 2007, but that the APA and American Airlines “opposed the flow-up of
15 eagle pilots...”

16 51. At the opening of Nicolau’s “Remedy Phase” hearing on February 25,
17 2010, ALPA lawyer Wayne Klocke, speaking about American Eagle pilots
18 governed by Letter 3, stated: “the longer that we delay their transfer, the greater
19 their damages by not being at American...” He also stated that Letter 3 of the CBA
20 mandates the “one-out-of-every-two new hires” requirement.

21 52. Upon information and belief, ALPA MEC officers and committeemen on
22 the American Eagle property were privately and clandestinely offering American
23 Eagle Airlines management waiver of those provisions applicable to Letter 3 pilots
24 that were unfavorable to American Eagle management and the APA in exchange
25 for new rights for another group of American Eagle pilots, including those union
26 officials, and ALPA lawyer Klocke was aware of such activity.
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53. During the course of the Remedy Phase hearings, ALPA was made aware of negative consequences that would accrue to American Eagle Airlines and its pilots should Arbitrator Nicolau's remedy be crafted according to the tenants of his ruling on the "narrow question." The lawyer for American Eagle Airlines used the phrase "severe operational consequences" and American Eagle's Vice President of People stated that the company would need to ground a minimum of 50 aircraft and pull down a significant amount of the American Eagle schedule. At no time during the remedy phase, or the mediated secret negotiations that followed, did ALPA ever advise the American Eagle pilots that enforcement of the arbitrator's award could – or would – have negative and severe consequences to American Eagle Airlines or its pilots, who were (and are) represented by ALPA. In fact, at no time has ALPA ever made such a representation to the American Eagle pilots as a basis for negotiating away the contractual rights (upheld by three (3) arbitrators) of Letter 3 pilots.

54. During the second day of hearings in the Nicolau Remedy Phase on February 26, 2010, Captain Ralph Hunter, a member of the 1991 APA Negotiating Committee, who negotiated Letter 3 on behalf of the American Airlines pilots, stated that the only way for a flow-through pilot to be removed from the American Airlines seniority list was via a demonstrated hardship and that the American Eagle pilot who accepted flow-through – as did the Plaintiff – incurred a "liability" to flow up to American Airlines and even if such a pilot elected to not flow up – which the Plaintiff did not – the pilot would not be released from his obligation to flow-through absent a demonstrated hardship.

55. At this same hearing, Kenneth Cooper, ALPA retired Assistant Director of Representation and an ALPA negotiator who negotiated Letter 3 of the CBA stated that "...you were going to AA unless you did one of two things: Elected 'Eagle Rights' or could demonstrate a hardship". The Plaintiff in this matter did neither.

1 56. Additionally, at this hearing Kenneth Cooper stated that an American Eagle
2 pilot who elected "Eagle Rights" was not eligible for future new hire positions at
3 American Airlines which otherwise might become available and that by electing
4 "Eagle Rights", an American Eagle pilot foreclosed himself from going to AA.

5 57. ALPA attempted to disguise the changes of this provision, crucial to MEC
6 Negotiating Chairman and then MEC Chairman Tony Gutierrez, who was an
7 "Eagle Rights" pilots who would be barred from future new hire positions at
8 American Airlines, by fraudulently misrepresenting the change to Letter 3 as the
9 result of Arbitrator Nicolau's own independent determination and not as it was: the
10 product of negotiations between ALPA and management.

11 58. Mr. Cooper also stated that, referring to a flow-through American Eagle
12 pilot transferring to American Airlines: "I mean, it was a question of, when his
13 number came up, the opportunity came up, we expected he was going".

14 59. On Monday, March 29, 2010, a dinner meeting took place in Washington,
15 D.C. at which the principles (four people, one from each party to Letter 3),
16 attended.

17 60. The next morning, Tuesday, March 30, 2010 at 10:10 AM, the third and
18 final hearing in the Nicolau Remedy Phase took place in Washington, D.C. This
19 meeting was remarkable in several respects. It began with ALPA lawyer Wayne
20 Klocke handing a stipulation to Arbitrator Nicolau, followed by Mr. Klocke stating
21 that he was willing to make certain arguments now "off the record", but was
22 willing to address them later when it came time for post-hearing briefs. Arbitrator
23 Nicolau agreed that the matter referenced by Klocke would be allowed to be
24 addressed in the post-hearing briefs. Next, American Airlines attorney Harry A.
25 Risetto told Arbitrator Nicolau about the principles' dinner the night before and
26 that ideas came from that dinner that may be relevant to the current hearing. At this
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1 point, ALPA lawyer Klocke stated: "I'd suggest that be off the record". All parties
2 present agreed to go off record.

3 61. Prior to going off record, Arbitrator Nicolau asked if the off-the-record
4 testimony could be "taken down confidentially, I mean not be a part of the public
5 record".

6 62. All parties agreed to this confidential transcription, and ALPA attorney
7 Klocke added: "I made the comment because I have the understanding that some of
8 the people may have been speaking in a mediation like tone or setting, that they
9 may have anticipated that their conversations were in the nature of potential
10 settlement".

11 63. The settlement referred to by Klocke was the product of ALPA willingly
12 trading away the rights of the Plaintiff for new rights; rights that amounted to a
13 windfall for pilots who had no rights under Letter 3 of the CBA, and certainly had
14 no rights to jobs at American Airlines.

15 64. American Eagle Airlines attorney Jack Gallagher then suggested that the
16 parties stipulate that "at the arbitrator's request the reporter will remain to take
17 notes for the arbitrator as the arbitrator's notetaker and even have her break the
18 transcript and have that part of her services billed with the arbitrator's services. It
19 may not be necessary to go that far, but basically whatever notes she takes from
20 that point forward are the arbitrator's notes and not any record of the four parties."

21 65. The record was then closed and reopened so that Arbitrator Nicolau could
22 make a determination that the post-hearing briefs he allowed earlier in the hearing
23 were no longer needed, "particularly since it is in the interest of everyone that my
24 award be issued sooner rather than later.

25 66. Apparently, all the issues that needed to be argued in post-hearing briefs
26 and all the differences between the parties had suddenly resolved themselves in the
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1 span of less than one (1) hour and subsequent to the decisions taken and
2 agreements reached at the principles' dinner the night prior to the hearing.

3 67. The reporter indicates that the arbitration concluded at 10:42AM, some
4 thirty-two (32) minutes after it began.

5 68. At no time during the course of the three (3) days of Remedy hearings, did
6 any party ever challenge Arbitrator Nicolau on jurisdiction and there is no basis to
7 assume he was not willingly granted such wide jurisdictional latitude as the parties
8 needed to accomplish their aims. Additionally, at no time was Arbitrator Nicolau
9 ever advised that a prior ruling by another arbitrator upheld the "one-out-of-two"
10 transfer mechanism and disallowed the seniority-based "recall" scheme that ALPA
11 negotiated with the parties at this mediated negotiation session.

12 69. The only representative of the American Eagle pilots present at this last and
13 crucial Remedy Hearing was Brian Sweep, the Chairman of the ALPA Contract
14 Compliance Committee, and who, upon information and belief, was paid by
15 American Eagle management and worked full time for ALPA from his home in
16 Maine.

17 70. The mediated negotiation that was masqueraded by ALPA as a Remedy
18 Hearing, described in paragraphs 48-69, traded existing rights of flow-through
19 pilots – rights that had been affirmed by at least 3 separate arbitrations - for
20 entirely new rights for pilots like Brian Sweep, who held a high union office and
21 participated in the events of March 29 and 30, 2010.

22 71. The product of this negotiation was never presented to the governing body
23 of ALPA on the American Eagle property (the MEC) for their vote to approve or
24 reject, as is required of negotiated agreements.

25 72. Upon information and belief, only 4 high ALPA elected officials directed
26 and conducted this negotiation and signed off on the final product: The MEC
27 Chairman, the MEC Vice-Chairman, the MEC Negotiating Committee Chairman
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1 and the MEC Contract Compliance Chairman, all of whom had a personal interest
2 in the outcome and who each benefitted from the outcome.

3 73. As a result of this mediated negotiation, the Plaintiff not only lost the
4 ability to transfer to American Airlines upheld by Arbitrators LaRocco, Bloch and
5 Nicolau, but had his transfer mechanism detrimentally – and fatally – changed
6 from that mandated by Letter 3 (i.e. one-out-of-every-two new hires) to a seniority-
7 based system rejected by a previous arbitration and which guaranteed that the
8 Plaintiff would only be allowed to transfer to American Airlines after every other
9 furloughed pilot on the American Airlines seniority list was offered recall, and
10 only if, after that point, American Airlines wished to bring on any additional pilots.

11 74. At all times since the Nicolau Remedy was published, ALPA has
12 misrepresented to the American Eagle pilots that the ruling was the arbitrator's and
13 his alone, and that ALPA had no role in the harm that accrued to flow-through
14 pilots as a result of the crafting of new employment opportunities at American
15 Airlines that were championed, designed and pursued by a select group of union
16 officers and committeemen for personal benefit.

17 75. Nicolau's Remedy Award was dated April 9, 2010.

18 76. From June 2007 until April 2010, no American Eagle Letter 3 pilots
19 transferred to American Airlines.
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21 77. At all times subsequent to Arbitrator Nicolau's ruling, the Plaintiff was
22 denied each and every request for documents, briefs and transcripts of both the
23 LaRocco and Nicolau arbitrations, even though the Plaintiff had an interest in those
24 matters and was a member in good standing of ALPA. No reason was ever
25 supplied to the Plaintiff as to why his requests for material produced by, and
26 relevant to, the above-described arbitrations were denied.

27 78. Upon information and belief, another interested Letter 3 pilot made
28 arrangements with ALPA to come to the ALPA offices in Euless, Texas to view

1 the transcripts and briefs related to the LaRocco and Nicolau arbitrations, but when
2 he arrived, he was advised by ALPA that the subject documents were no longer
3 present at the offices, which were the principle and only offices of the American
4 Eagle Airlines division of ALPA.

5 79. On March 18, 2013, the Plaintiff resigned under duress from American
6 Eagle Airlines in order to access 401(k) savings that were needed while recovering
7 from an illness. At no time did the Plaintiff ever resign his American Airlines
8 seniority number and at no time did ALPA or American Eagle Airlines ever advise
9 the Plaintiff that his resignation would – in their estimation – cause the Plaintiff to
10 lose his American Airlines seniority number.

11 80. Upon information and belief, it was ALPA who demanded that Plaintiff be
12 removed from the American Airlines seniority list in retaliation for Plaintiff's lack
13 of support and criticism of the then current ALPA administration on the American
14 Eagle property.

15 81. The Plaintiff has expressed criticism of ALPA, and did so based on his
16 many years of union service, which culminated with his election as MEC
17 Chairman in 2000, the highest elected position on any ALPA property.

18 82. Throughout the arbitration processes, beginning prior to the LaRocco
19 arbitration in 2008, and concluding only months ago in 2014, the Plaintiff was in
20 constant written and telephonic communication with ALPA lawyers in Texas and
21 Washington, D.C., warning about the harm accruing by ALPA's local actions in
22 the matter of Letter 3, including non-enforcement and dispute resolution
23 manipulation, and apprising ALPA lawyers that these actions by the elected
24 officers and others constitute breaches of ALPA's duty of fair representation to the
25 Plaintiff.
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1 83. On or about May 2013, the Plaintiff's Letter 3 peers began receiving
2 notification from American Airlines that they were finally being summoned to
3 class at American Airlines.

4 84. The Plaintiff, having received no notification of class at American Airlines,
5 advised ALPA lawyer Wayne Klocke on May 21, 2013 that he had received no
6 notice from American Airlines and reiterated Plaintiff's claim that he had not
7 relinquished his American Airlines seniority number.

8 85. Klocke responded to Plaintiff on May 24, 2013, not with an offer of help
9 but with questions about Plaintiff's resignation.

10 86. Plaintiff responded to Klocke on May 24, 2013 and advised Klocke that he
11 (Plaintiff) currently met all requirements for transfer to American Airlines and
12 requested that ALPA file a grievance on behalf of the Plaintiff regarding his
13 exclusion from American Airlines new hire class.

14 87. ALPA lawyer Klocke responded on July 10, 2010 that "in no prior instance
15 has a pilot who has received an AA seniority number under Letter 3 been offered a
16 flow through position in an AA new hire class at a time when that pilot was no
17 longer employed with American Eagle". Klocke was certainly aware at the time he
18 made such statement that the present claim by the Plaintiff was never before raised,
19 encountered or challenged on the American Eagle property.

20 88. ALPA agreed to process Plaintiff's grievance but concluded sight unseen
21 that it would not support Plaintiff's position in the grievance. Upon information
22 and belief, paragraph 81 describes why ALPA opposed the Plaintiff's grievance.

23 89. Then Klocke, apparently changing his mind due to direction from ALPA
24 lawyers in Washington, D.C., advised the Plaintiff that ALPA might support his
25 grievance if he provides "substantial evidence" that Plaintiff was forced to resign.
26 Klocke was advised that he was already aware of the entire and complete
27 circumstances surrounding the Plaintiff's resignation because the Plaintiff had
28

1 discussed these issues openly and forthrightly with Klocke, in his capacity as
2 counsel to ALPA members in good standing (as was the Plaintiff), over several
3 telephone calls.

4 90. This is evidenced by the fact that Klocke worked on a 401(k) access
5 problem on behalf of the Plaintiff, and at the Plaintiff's request, during this period.

6 91. Klocke reiterated ALPA's willingness to file and process Plaintiff's
7 grievance and even advised that it would be to the Plaintiff's benefit to file his
8 grievance sooner rather than later.

9 92. On October 2, 2013, the Plaintiff supplied ALPA with the text of his
10 grievance.

11 93. Beginning on October 2, 2013 through November 12, 2013 ALPA lawyer
12 Klocke, under guidance from ALPA lawyer Jim Lobsenz, who is based at ALPA
13 headquarters in Washington, D.C., attempted to coerce the Plaintiff into crafting a
14 grievance that was acceptable to ALPA, and not responsive to the violations
15 alleged by the Plaintiff.

16 94. Plaintiff refused to remove from his grievance the issues that constitute the
17 majority of this resulting complaint.

18 95. ALPA did not comply with the dispute resolution process timelines
19 contained in Letter 3 and did not conduct a meeting of the signatories to Letter 3,
20 as is required and described by Letter 3 and as has been the past practice. Instead,
21 the only meeting that took place was a meeting of lawyers representing the Letter 3
22 signatories who, by ALPA's own admission, were not empowered to make any
23 decisions about resolving the subject dispute on behalf of their respective clients,
24 which is the express purpose of the Letter 3-mandated meeting. Finally, after
25 dragging out the grievance process for almost three and a half (3.5) months, ALPA
26 reneged on its commitment to process the grievance on behalf of the Plaintiff,
27
28

1 using the excuse that the other parties would not agree to participate in a
2 mandatory dispute resolution process.

3 96. Throughout his years of union service, the Plaintiff has never heard of
4 permission needing to be required from management or other obligated party prior
5 to being able to access the mandatory and contractually agreed-upon dispute
6 resolution process. If such were the case, management would never agree to
7 arbitrate and no dispute would ever be resolved.

8 97. On January 9, 2014, ALPA advised the Plaintiff that it would take no
9 further action in the matter of the Plaintiff's grievance.
10
11
12

13 **Count 1:**
14 **Breach of the Duty of Fair Representation**
15 **Damages Sought: Lost Career Earnings of \$ 3,000,000.00**

16 98. Plaintiff repeats and realleges each and every allegation set forth in
17 paragraphs "1" through "97" hereof, with like force and effect as though set forth
18 at length herein.

19 99. ALPA, representing the pilots of American Eagle Airlines owes a duty to
20 fairly represent the Plaintiff even if doing so is at odds with the goals and agenda
21 of ALPA MEC officials and certain committee members and chairmen.
22

23 100. The ruling and supplemental award by Arbitrator LaRocco on May
24 11, 2007, in favor of the Plaintiff, was never enforced by ALPA, nor did ALPA
25 demand compliance with the ruling by American Eagle and American Airlines
26 management.
27
28

1 101. ALPA has the contractual right to enforce arbitration decisions in
2 federal court and arbitrations are “final, bidding and conclusive” on the company
3 and ALPA.

4 102. ALPA engaged in improper activities to delay and avoid
5 enforcement of Arbitrator LaRocco’s ruling and award and engaged in discussions
6 with American Eagle management about new rights for union official and their
7 supporters.

8 103. ALPA thus denied the Plaintiff the right to flow through to American
9 Airlines consistent with his rights, as affirmed by Arbitrator LaRocco.

10 104. In acting as it did, ALPA breached its duty of fair representation to
11 the Plaintiff by acting in a manner that was characterized by bad faith.

12 105. In acting as it did, ALPA breached its duty of fair representation to
13 the Plaintiff by acting in a manner that was characterized by arbitrariness.

14 106. In acting as it did, ALPA breached its duty of fair representation to
15 the Plaintiff by acting in a manner that was characterized by discrimination.
16

17
18 **Count II:**

19 **Breach of the Duty of Fair Representation**

20 **Damages Sought: Lost Career Earnings of \$ 3,000,000.00**

21 107. Plaintiff repeats and realleges each and every allegation set forth in
22 paragraphs “1” through “97” hereof, with like force and effect as though set forth
23 at length herein.

24 108. ALPA arbitrated the LaRocco ruling before Arbitrator Nicolau in an
25 attempt to delay enforcement of Arbitrator LaRocco’s award and allow for more
26 time to negotiate new rights to jobs at American Airlines for pilots who had no
27 stake or benefit in Letter 3.
28

1 109. Arbitrator Nicolau declined to undo Arbitrator LaRocco's ruling and,
2 in fact, strengthened LaRocco's award.

3 110. ALPA's silence about non-enforcement of LaRocco and the practical
4 effect of Nicolau's initial ruling deprived American Eagle pilots, including the
5 Plaintiff, with information necessary to challenge ALPA's activities in Letter 3
6 matters.

7 111. When the four (4) parties to Letter 3 could not reach agreement on
8 the remedy resulting from Arbitrator Nicolau's award, and the matter was returned
9 to Arbitrator Nicolau for imposition of remedy, the parties intensified their
10 negotiations, culminating with a March 30, 2010 Remedy Phase hearing in
11 Washington, D.C. that began with unresolved issues of importance and the need
12 for post-hearing briefs to a completely resolved matter with no post-hearing briefs
13 being required by the arbitrator, all in a time span of thirty-two (32) minutes.

14 112. At all times during and since the "Nicolau Award", ALPA has
15 misrepresented the mediated negotiations as an arbitration, and blamed any and all
16 harm that befell Letter 3 pilots, as well as the newly acquired rights to employment
17 at American Airlines as the result of the arbitrator's independent ruling and his
18 unilateral "award", and at no time did the MEC officers have the governing body
19 of the American Eagle pilots (the MEC) vote on these results of negotiations with
20 management, as is required when creating new contractual provisions that apply to
21 the pilots of American Eagle Airlines.

22 113. ALPA never advised Arbitrator Nicolau that changing the flow-
23 through mechanism from one-out-of-every-two new hires to one based solely on
24 seniority was dismissed by a previous arbitrator as not in compliance with Letter 3.

25 114. As a result of this disguised negotiation, ALPA allowed management
26 to further delay his transfer to American Airlines by changing the methodology
27 governing flow-through from one-out-of-two, which would have placed the
28

1 Plaintiff at American Airlines in mid-2010 to being able to transfer to American
2 Airlines only after every other furloughed TWA “new-hire” pilot was first given
3 the opportunity to be recalled to American Airlines.

4 115. ALPA agreed to delay the Plaintiff’s transfer to American Airlines
5 until October 9, 2013, exactly three and one-half (3.5) years after Arbitrator
6 Nicolau’s Award.

7 116. In acting as it did, ALPA breached its duty of fair representation to
8 the Plaintiff by acting in a manner that was characterized by bad faith.

9 117. In acting as it did, ALPA breached its duty of fair representation to the
10 Plaintiff by acting in a manner that was characterized by arbitrariness.

11 118. In acting as it did, ALPA breached its duty of fair representation to the
12 Plaintiff by acting in a manner that was characterized by discrimination.
13
14
15

16 **Count III:**

17 **Breach of the Duty of Fair Representation**

18 **Damages Sought: Lost Career Earnings of \$ 3,000,000.00**

19 119. Plaintiff repeats and realleges each and every allegation set forth in
20 paragraphs “1” through “97” hereof, with like force and effect as though set forth
21 at length herein.

22 120. The Plaintiff met all requirements required to retain and exercise his
23 American Airlines seniority number on October 9, 2013, under Arbitrator Bloch’s
24 ruling on June 30, 2008.

25 121. All Letter 3 flow-through pilots were resigned from American Eagle
26 Airlines by American Eagle management PRIOR to their transfer to American
27 Airlines, so resignation from American Eagle is not a bar to flow-through rights.
28

1 122. American Eagle Airlines, Inc. is a separate and distinct company
2 from American Airlines, Inc.

3 123. “Flow-through” pilots moving from American Eagle Airlines, Inc. to
4 American Airlines, Inc., are not considered inter-company transfers.

5 124. As a result of Arbitrator Nicolau’s ruling, ALPA entered into an
6 agreement with American Eagle management over preferential hiring rights for
7 American Eagle pilots, pilots for whom no such rights existed at the time
8 Arbitrator Nicolau defined the “narrow question” of the matter before him.

9 125. ALPA negotiated portability rights into that agreement so that the
10 flow-through rights for the newly benefitted pilots did not require employment at
11 American Eagle Airlines, Inc.

12 126. Former TWA, LLC pilots who were given American Airlines
13 seniority numbers and then sent into Captain positions at American Eagle Airlines,
14 consistent with APA and American Airlines/American Eagle Airlines’ reading of
15 Letter 3, and who subsequently resigned did not lose their American Airlines
16 seniority numbers and were allowed to exercise the employment rights of those
17 American Airlines seniority numbers during the proximate time that the Plaintiff
18 was denied the right to exercise his American Airlines seniority number. In fact,
19 even TWA, LLC pilots who were **fired** from American Eagle Airlines due to their
20 **failing** the American Eagle pilot training program were ALLOWED to exercise the
21 rights of their American Airlines seniority numbers, and many of them are flying at
22 American Airlines today.
23

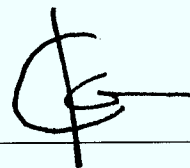
24 127. ALPA committed to the Plaintiff that it would file and process a
25 grievance on the Plaintiff’s behalf, but then reneged when it came time for the
26 arbitration phase.
27
28

JURY DEMAND:

133. Plaintiff respectfully demands a trial by jury on all claims and issues triable to a jury.

Dated this 31st day of March, 2014

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'C. Kehm', written over a horizontal line.

Cevin D. Kehm
9780 Palmetto Club Dr.
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Tel: (305) 505-4443

Plaintiff *Pro Se*

Certificate of Service

I hereby certify that a true and correct copy of the foregoing was served by

_____ on _____
on all counsel or parties of record on the Service List below.

Signature of Filer

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